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IN THE

Supreme Court of the United States

October Term, 1959

No. 171

WILLIAM J. HANEON, JR.,
Petitioner,

against

WATERMAN STEAMSHIP CORPORATION,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HANRAHAN & COSTELLO
Attorneys for Respondent

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BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the United States District Court for the Southern District of New York is not reported. The opinion of the United States Court of Appeals for the Second Circuit is set out at 265 F. 2d 206.

Jurisdiction

The judgment of the Court of Appeals was entered April 2, 1959. The petition for certiorari was filed on

July 1, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question

Whether suit may be brought against the general agent of a government-owned and operated vessel for injuries allegedly resulting from an assault upon petitioner by a fellow seaman and from an asserted lack of adequate medical care aboard.

Statutes

Section 5 of the Suits in Admiralty Act, 41 Stat. 526, as amended in 1950 by 64 Stat. 1112 (46 U. S. C. 745), provides in pertinent part:

> Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided*, That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: *Provided further*, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after December 13, 1950, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United

States to manage and conduct business of a vessel owned or bareboat chartered by the United States or against the master of any such vessel; * * *

Statement

This action was brought by petitioner, a seaman formerly employed on the SS BUCYRUS VICTORY, a vessel owned and operated by the United States through the Maritime Administration, for which respondent Waterman S.S. Corporation was general agent under the standard form agency agreement GAA-3-19-51, 16 Federal Register 2703, March 28, 1951. It sought damages for personal injuries allegedly resulting from an assault upon petitioner by a fellow seaman and from failure to provide proper medical care and payment of maintenance. The action was predicated upon the Jones Act and the general maritime law. Respondent moved on the basis of the complaint and affidavits for an order of dismissal "on the grounds that the wrong party defendant has been named and sued herein."

The District Court (Honorable Richard K. Levet) granted the motion and dismissed the complaint. The Court of Appeals affirmed, invoking 46 U. S. C. 745, which it quoted as providing that "where a remedy is provided by this chapter [against the United States], it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent * * * whose act or omission gave rise to the claim."

Argument

The petition in this case seeks to raise a single issue —which, after full consideration, both courts below

properly determined against petitioner—whether (where petitioner has an undoubted right to proceed against the United States under the Suits in Admiralty Act for any alleged wrongful acts of its general agent, ship-master, crew or other officers, agents, or employees), Congress has withdrawn jurisdiction for a suit against such general agent. The decision below, that such jurisdiction has been withdrawn, is clearly correct, there is no conflict of decision and the case presents no issues which merit review by this Court.

1. In *Weade* v. *Dichmann, Wright & Pugh*, 337 U. S. 801, an action against a general agent of the United States under an agreement similar to that here involved, this Court held that while the officers and crew of the vessel were servants of the United States and not of the agent, the tort complained of might have been committed by persons who were employees of the general agent and not of the United States, and thus constitutes the personal tort of the general agent. The case was remanded for consideration of that possibility. Thereafter, Congress amended the Suits in Admiralty Act so that regardless of the personal tort of a general agent, the right to sue would be exclusively against the United States. As thus amended by the Act of December 13, 1950, c. 1136, 64 Stat. 1112 (46 U. S. C. 745), the statute provides as follows:

> Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided*, That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same

> subject matter against the agent or employee of the United States * * * whose act or omission gave rise to the claim.

That this clear withdrawal of jurisdiction for suits against general agents was in accordance with the intent of Congress is shown by the report of the Senate Judiciary Committee with respect to the purpose of the quoted proviso:

> It is provided that where suit is authorized against the United States it is exclusive of any other action by reason of the same subject matter against the agent or employee of the Government agency involved. [S. Rep. 2535, 81st Cong. 2d Sess., p. 2.]

2. Prior to the decision of the court below the question had been the subject of judicial review by the Fourth and Fifth Circuits. In *Williams* v. *United States*, 228 F. 2d 129, 132, 133, certiorari denied 351 U. S. 986, the Court of Appeals for the Fourth Circuit, considering the case of a seaman who alleged that the personal fault of the general agent had aggravated a mental condition and resulted in his breakdown, held that he was precluded from suing the general agent because the proviso to the 1950 amendment made his remedy against the United States exclusive. In *Atlantic Coast Line RR Co.* v. *Aguilines*, 195 F. 2d 459, 461, the Court of Appeals for the Fifth Circuit affirmed a summary judgment in favor of a general agent although plaintiff-appellant (like petitioner here) sought to establish the general agent's personal liability despite the 1950 proviso by invoking this Court's hold-

ings in *Brady* v. *Roosevelt S. S. Co.*, 317 U. S. 575. The Fifth Circuit expressly declared: "The remedy against the United States provided by the Public Vessels and Suits in Admiralty Acts is exclusive."[1]

In the presence of the statute's plain language, the legislative reports and the decisions of two courts, petitioner's suggestion (Pet. 6) that "it does violence to common sense and logic" to conclude that Congress has made the right of suit against the United States exclusive of suit against the general agent and that Government liability "is hardly justification for granting immunity" to the agent, is footless.

3. The power of Congress to substitute petitioner's exclusive right to sue the United States for his remedy by suit against the general agent is as unquestionable as its intention to do so. It is well established that, "The particular remedy existing at the date of the [obligation] may be altogether abrogated if another equally effective for the enforcement remains or is substituted for the one taken away." *Richmond Corp.* v. *Wachovia Bank*, 300 U. S. 124, 128; *Crozier* v. *Krupp*, 224 U. S. 290, 312; *Hurley* v. *Kincaid*, 285

[1] Petitioner's reliance on *Arnold* v. *Luckenbach S. S. Co.*, 160 F. Supp. 807 (S.D.N.Y.), as contrary to the Fourth and Fifth Circuit decisions cannot be accepted since the case was later dismissed (162 F. Supp. 58) because of 46 U. S. C. 745. See also *Richardson* v. *American President Lines*, 144 F. Supp. 641, where in dismissing suit against the general agent, the court declared: "Plaintiff's first contention—that 46 U.S.C.A. 745, as amended in 1950, was not intended to change the rule laid down in the *Weade* case—flies in the face of the plain and unambiguous language of section 745. * * * The mere fact that certain acts otherwise clearly within the scope of the agency were perhaps performed negligently does not take such acts outside the agency relationship." And since the United States would be liable for the acts, suit against the agent was prohibited.

U. S. 93; *Richmond Co.* v. *United States*, 275 U. S. 331, 334; *Burrill* v. *Locomobile Co.*, 258 U. S. 34.[2] As petitioner's claims are governed by maritime law, there can be no objection that the creation of the exclusive remedy by Congress results in withdrawing the right to jury trial previously conferred by the Jones Act, 46 U. S. C. 688. *Crowell* v. *Benson*, 285 U. S. 22, 45. It is also significant that petitioner's claim arose long after the 1950 amendment was enacted and its meaning established by court decision.

Conclusion

For the foregoing reasons, we respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

HANRAHAN & COSTELLO
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July, 1959.

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[2] See also, *Block* v. *Hirsch*, 256 U. S. 135, 158; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 341; *Toneyman* v. *Hanan*, 302 U. S. 375; *Honeyman* v. *Jacobs*, 306 U. S. 539, 542; *Yearsley* v. *Ross Construction Co.*, 309 U. S. 18, 22; *Timken-Detroit Axle Co.* v. *Alma Motor Co.*, 144 F. 2d 714 (C. A. 3), reversed on other grounds 329 U. S. 129.